

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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Louis Marciano,

Plaintiff,

v.

Harley-Davidson, Inc.,

Defendant.

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: Civil Action No.: 1:14-cv-204 (MAD/CFH)  
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**COMPLAINT**

For this Complaint, the Plaintiff, Louis Marciano, by undersigned counsel, states as follows:

**JURISDICTION**

1. This action arises out of the Defendants' repeated violations the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").
2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Defendants transact business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

**PARTIES**

4. The Plaintiff, Louis Marciano ("Plaintiff"), is an adult individual residing in Rensselaer, New York, and is a "person" as defined by 47 U.S.C. § 153(39).
5. Defendant Harley-Davidson, Inc. ("Harley-Davidson"), is a Wisconsin business entity with an address of 3700 West Juneau Avenue, Milwaukee, Wisconsin 53208, and is a "person" as defined by 47 U.S.C. § 153(39).

**FACTS**

6. In or around May 2013, Harley-Davidson began placing calls to Plaintiff's cellular telephone number.

7. At all times mentioned herein, Harley-Davidson placed calls to Plaintiff's cellular telephone number using an automatic telephone dialing system ("ATDS") and/or by using an artificial or prerecorded voice.

8. When Plaintiff answered a call from Harley-Davidson he was met with a recording instructing Plaintiff to remain on the line for the next available representative.

9. In or around June 2013 Plaintiff spoke to Harley-Davidson and requested that it cease placing calls to his cellular phone.

10. Although Harley-Davidson no longer had Plaintiff's consent to place calls to Plaintiff's cellular telephone, it continued to place such calls at a rate of about two calls per day.

11. The telephone number called by Harley-Davidson was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

12. The calls from Harley-Davidson to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

**COUNT I**

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –  
47 U.S.C. § 227, et seq.**

13. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

14. Defendant placed calls to Plaintiff's cellular telephone using prerecorded voice knowing that it lacked consent to call his number. As such, each call placed to Plaintiff was

made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

15. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

16. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

**PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff respectfully prays that judgment be awarded in the Plaintiff's favor and against the Defendant as follows:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C);
3. Such other and further relief as may be just and proper.

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

Dated: February 27, 2014

Respectfully submitted,

By /s/ Sergei Lemberg

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